UNITED STATES DISTRICT COURT DISTRICT OF RHODE ISLAND

IRWIN JACOBOWITZ, et. al.

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v.

C.A. No. 18-00311-WES

STATE OF PROVIDENCE, et. al.

REPORT AND RECOMMENDATION FOR SUMMARY DISMISSAL PURSUANT TO 28 U.S.C. § 1915(e)

Lincoln D. Almond, United States Magistrate Judge

Background

On June 12, 2018, Plaintiffs filed a <u>pro se</u> Complaint accompanied by an Application to Proceed Without Prepayment of Fees including the \$400.00 per case filing fee. (ECF Doc. Nos. 1, 2). Plaintiffs' Application (ECF Doc. No. 2) filed pursuant to 28 U.S.C. § 1915 has been referred to me for determination. 28 U.S.C. § 636; LR Cv 72. After reviewing Plaintiffs' Application signed under penalty of perjury, I conclude that Plaintiffs are financially unable to pay the fees and costs of this proposed civil case and thus their Application to Proceed Without Prepayment of Fees (ECF Doc. No. 2) is GRANTED.

Having granted IFP status, I am required by statute to further review Plaintiffs' Complaint sua sponte under 28 U.S.C. § 1915(e)(2) and to dismiss if it is "frivolous or malicious," "fails to state a claim on which relief may be granted" or "seeks monetary relief against a defendant who is immune from such relief." For the reasons discussed below, I recommend that Plaintiffs' Complaint be DISMISSED because it is "frivolous," and "fails to state a claim on which relief may be granted." See 28 U.S.C. § 1915(e)(2)(B).

Facts

Plaintiffs sue the "State of Providence Attorney General," their former landlords Louis and Jessica Bachetti, the Bachettis' lawyer Michael Crane, Constables Ken and Kyle Norigean, Albert and Mrs. Cardoza, John and Jane Does, the Town of Barrington and the Barrington Police Department as well as its Police Chief John LaCross and Police Officer Joshua Melo. In their Statement of Claim, they indicate that the case "involves" several "State Actors" and private parties. They claim "illegal eviction...from property, harassment, discrimination, civil rights violations." (ECF Doc. No. 1 at p. 6).

Standard of Review

Section 1915 of Title 28 requires a federal court to dismiss an action brought thereunder if the court determines that the action is frivolous, fails to state a claim or seeks damages from a defendant with immunity. 28 U.S.C. § 1915(e)(2)(B). The standard for dismissal of an action filed in forma pauperis is identical to the standard for dismissal on a motion to dismiss brought under Fed. R. Civ. P. 12(b)(6). See Fridman v. City of N.Y., 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002). In other words, the court "should not grant the motion unless it appears to a certainty that the plaintiff would be unable to recover under any set of facts." Roma Constr. Co. v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996). Section 1915 also requires dismissal if the court is satisfied that the action is "frivolous." 28 U.S.C. § 1915(e)(2)(B)(i). A claim "is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Discussion

This Court is recommending that Plaintiffs' Complaint be summarily dismissed pursuant to 28 U.S.C. § 1915(e)(2). In making this recommendation, this Court has taken all of the allegations in Plaintiffs' Complaint as true and has drawn all reasonable inferences in his favor. Estelle v. Gamble,

429 U.S. 97 (1976). In addition, this Court has liberally reviewed Plaintiffs' allegations and legal

claims since they have been put forth by a pro se litigant. See Haines v. Kerner, 404 U.S. 519, 520-

521 (1972). However, even applying these liberal standards of review to Plaintiffs' Complaint,

dismissal is required.

Plaintiffs' claims are wholly conclusory and completely unsupported by any facts which might

support plausible legal claims against any of the named Defendants. The Complaint contains no facts

and fails to provide any notice to the Court or the Defendants as to what Plaintiffs are claiming in this

case. The Complaint fails to state any legal claims upon which relief could be granted and thus

dismissal is required under 28 USC section 1915(e)(2)(B)(ii).

Conclusion

For the reasons stated, Plaintiffs' Application to Proceed Without Prepayment of Fees (ECF

Doc. No. 2) is GRANTED. However, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and (ii), I further

recommend that Plaintiffs' Complaint (ECF Doc. No. 1) be DISMISSED without prejudice.

Any objection to this Report and Recommendation must be specific and must be filed with the

Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure

to file specific objections in a timely manner constitutes waiver of the right to review by the District

Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792

F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

Lincoln D. Almond LINCOLN D. ALMOND

United States Magistrate Judge

June 14, 2018

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